

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARSHA R. TISON and DEPARTMENT OF THE ARMY,
FORT HOOD, TX

*Docket No. 99-273; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 27, 1997.

On December 15, 1994 appellant, then a 44-year-old dental assistant, filed a claim alleging that the factors of her federal employment caused progressive rheumatoid arthritis of both hands. Appellant stopped work on July 6, 1995 and did not return. Her claim was accepted by the Office for an employment-related aggravation of rheumatoid arthritis of both hands and she received appropriate compensation for total disability.

The record indicates that appellant was treated by Dr. J.W. Jundt, a rheumatologist, who opined that appellant's job duties caused a continuing and irreversible change in her underlying rheumatoid arthritis which adversely altered the course of the disease process. Appellant was thereafter referred by the Office for examination by Dr. Gerald Rosenberg, a Board-certified specialist, who noted appellant's 26-year history of rheumatoid arthritis and opined that the disease was not caused or aggravated by her federal employment, especially as the condition impacted multiple joints throughout appellant's body. The Office determined that a conflict in medical opinion was created between Dr. Jundt and Dr. Rosenberg and referred appellant for examination by Dr. Thomas Geppert, a Board-certified specialist and Associate Professor of Medicine at the University of Texas Medical Center, to serve as the impartial medical specialist.¹

In a report dated December 4, 1996, Dr. Geppert set forth appellant's history of rheumatoid arthritis and set forth findings from a physical examination.² Following clarification of his opinion in a January 16, 1997 report, the Office advised appellant that it proposed to terminate her compensation based on the opinion of Dr. Geppert. By letter dated April 11, 1997, appellant disagreed with the proposed termination, noting that Dr. Geppert had not examined her

¹ See 5 U.S.C. § 8123(a); *Marion Thornton*, 46 ECAB 899 (1995).

² The report bears the signature of Dr. Geppert as the attending physician with Dr. Sophia Chang listed as "Fellow."

at the December 4, 1996 evaluation. Rather, appellant noted that she was examined by Dr. Sophia Chang, a Fellow at the Medical Center.

By decision dated April 17, 1997, the Office terminated appellant's compensation effective April 27, 1997, finding that the weight of medical opinion was represented by the report of Dr. Geppert. The Office noted appellant's assertion that Dr. Geppert did not perform the actual physical examination, but found that he had reviewed the medical evidence of record, the statement of accepted facts and had responded to the Office's questions.

Appellant requested a hearing before an Office hearing representative which was held on April 28, 1998. By decision dated July 9, 1998, the Office hearing representative affirmed the April 17, 1997 decision. Finding that Dr. Geppert's medical reports constituted the weight of medical opinion, the hearing representative noted "Dr. Geppert's opinion was based on a thorough evaluation of the claimant performed on his behalf by Dr. Chang and review of the medical records and is supported by medical reasoning."

The Board finds that the Office improperly terminated appellant's compensation benefits effective April 27, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.³

In the present case, the Office found a conflict in medical opinion between appellant's treating physician, Dr. Jundt, and an Office referral physician, Dr. Rosenberg. Based on this conflict, the Office properly referred appellant to Dr. Geppert, selected as the impartial medical specialist. However, the record establishes that Dr. Geppert did not conduct the physical examination of appellant scheduled for December 4, 1996. Rather, the physical examination was performed by Dr. Chang, a Fellow in Rheumatology at the University of Texas Medical Center. Although the Office has accepted the reports from Dr. Geppert as constituting the weight of medical opinion, the Board finds that Dr. Geppert may not be considered an impartial medical specialist because he did not perform the physical examination of appellant.

It is well established that a physician selected by the Office to serve as an impartial medical specialist should be one wholly free to make a completely independent evaluation and judgment.⁴ In order to achieve this, the Office has developed specific procedures pertaining to the selection of an impartial medical specialist and the nature of the evaluation conducted. These procedures, set forth in the Federal (FECA) Procedure Manual, provide in pertinent part:

"b. *CE Review*. The CE [claims examiner] will review the specialist's report to ensure that it meets the tests for a referee examination and that it addresses all issues posed.

³ See Patricia A. Keller, 45 ECAB 278 (1993).

⁴ See Shirley L. Steib, 46 ECAB 309, 316 (1994).

(1) *If someone other than the selected physician examined the claimant, the report cannot be used to resolve a conflict in medical opinion and cannot be afforded special weight. It should be annotated accordingly, and another referee examination must be arranged.*”⁵

In the present case, as noted by the Office claims examiner and Office hearing representative, someone other than Dr. Geppert, the selected impartial physician, conducted the physical examination of appellant. For this reason, the reports of Dr. Geppert cannot be used to resolve the conflict in medical opinion and cannot be afforded special weight in this case under the provisions of the Federal (FECA) Procedure Manual. To permit use of Dr. Chang’s physical examination, whose participation is not fully addressed in the reports of Dr. Geppert, would undermine the appearance of impartiality and compromise the integrity of the system utilized for selecting impartial medical specialists. Dr. Geppert’s report does not contain any reference to the participation of Dr. Chang or otherwise describe any special expertise or need for her to conduct the physical examination of appellant in this case.

Accordingly, the Board finds that there remains an unresolved conflict in medical opinion. The Office improperly terminated appellant’s compensation benefits effective April 27, 1997.

The July 9, 1998 decision of the Office of Workers’ Compensation Programs is reversed.

Dated, Washington, D.C.
August 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.5(b)(1) (October 1995).